IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

WEDNESDAY, THE 13TH DECEMBER 2006 / 22ND AGRAHAYANA 1928

WP(C).No. 32694 of 2006(P)

PETITIONER:

A.K.KOCHOL, HEAD CONSTABLE (RETD),
HC 4275, AMANCHUVATTIL HOUSE,
VENGARAPILLY P.O., MULAMTHURUTHY,
ERNAKULAM DISTRICT.

BY ADV. SMT.S.KARTHIKA
SRI.M.S.UNNIKRISHNAN
SMT.T.B.REMANI
SMT.K.P.GEETHA MANI
SRI.T.R.RAJESH
SRI.M.R.ANISON

RESPONDENTS:

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1. STATE OF KERALA, REP. BY THE PRINCIPAL SECRETARY TO GOVT., HOME DEPARTMENT, GOVT. SECRETARIAT, TRIVANDRUM.

2. THE DEPUTY INSPECTOR GENERAL OF POLICE, ERNAKULAM RANGE, ERNAKULAM.

3. THE COMMISSIONER OF POLICE, COCHIN CITY, ERNAKULAM.

BY GOVT. PLEADER SHRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

WP(C)No. 32694 OF 2006

Dated this the 13th December, 2006.

JUDGMENT

The petitioner was in service as Head Constable. While so working in the Hill Palace Police Station from 17.2.1997 to 20.5.2000 memo of charges was issued to him alleging that he had committed serious dereliction of duty in not ascertaining the whereabouts of the accused in Crime No:239/99 of that police station though the absconding accused was very much available in a house within 200 mtrs. of the police station. The explanation submitted by the petitioner that there was no lapses on his part was not accepted being found unsatisfactory. Based on records, it was concluded that the petitioner had committed the misconduct alleged in the memo of charges. The petitioner was served with Ext.P7 show cause notice and after considering Ext.P8 further representation filed by him, Ext.P10 order was passed by the disciplinary authority viz., the City Police Commissioner on 8.11.2001. The penalty imposed on him was withholding of his two increments without cumulative effect. The appellate authority while affirming the decision of the disciplinary authority had reduced the penalty from that of barring of two increments to one increment without cumulative effect.

Not satisfied, he preferred a review petition before the Government. Government as per Ext.P12 has rejected the review petition.

2. One of the grounds raised in this writ petition is that the petitioner is not guilty of the charges. However, I find that the disciplinary authority as also the other statutory authorities have perused the materials on record and after considering the representation of the petitioner came to the conclusion that there was dereliction of duty on his part. The procedure followed is one prescribed for minor penalty and the punishment inflicted is also barring of increment. Hence there cannot be a contention that due procedure was not followed by the respondents.

3. Counsel for the petitioner contends that this is a case where witnesses ought to have been examined in support of the charges and without collecting such evidence, the petitioner ought not to have been found guilty.

4. I am unable to accept the above contention. Firstly, the charge of dereliction of duty is one raised on the basis of the records maintained in the police station including the investigation records. Those records are items of evidence to establish that the petitioner did not act diligently and that due to lapses on his part the absconding accused could not be traced and arrested. The petitioner had no case in his written statement of defence

that witnesses should be examined. He, in fact, made a request that the records should be perused and he should be found not guilty. Hence to contend that there is violation of the procedural safeguards is devoid of merit.

5. The penalty imposed cannot be said to be excessive having regard to the nature of the misconduct found proved. The contention that the order passed by the disciplinary authority as per Ext.P10 was served on him only after his retirement from service is of no consequence since the petitioner was afforded the opportunity to challenge the same before the appellate authority as well as the reviewing authority and both those authorities have examined the contentions of the petitioner. The Government have passed a speaking order touching the merits of the contentions of the petitioner. I am of the opinion that there is no scope for interference in exercise of the jurisdiction under Article 226 of the Constitution of India. Writ petition is dismissed.

K.K.DENESAN
Judge

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